IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2071 OF 2004

Santosh Baliram Thote ... Petitioner

versus

State of Maharashtra & anr. ... Respondents

...

Mr. Uday Warunjikar, for the Petitioner.

Mr. K.V. Saste, A.P.P., for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

28th October 2004

P.C.:

. Heard Counsel for the parties. Essentially, four contentions have been raised before me. The first argument is that the action against the Petitioner is founded on cases which were registered as back as in the year 2001. At the relevant time, the Petitioner was admittedly below 18 years of age and, therefore, juvenile offender. If it is so, those cases cannot be made basis for action against the Petitioner. It is then contended that the fifth case referred to

in the list of cases is admittedly non-cognisable offence and that cannot be the basis to take action against the Petitioner. On the above submissions, it is contended that only two cases are left for consideration namely, CR.No. 363/2002 and CR. No. 12/2004 which by themselves were not sufficient for initiating action against the Petitioner under section 56 of the Act. I find no substance in any of the above contentions. The fact that reference is made to cases registered against the Petitioner in the year 2001 at which point of time the Petitioner was below 18 years of age will make no difference for initiating action against the Petitioner under section 56 of the Act. Admittedly, when the action is initiated against the Petitioner, he is above 20 years of age. Those cases have been only referred to establish the antecedents of the Petitioner and made foundation for the proposed action under section 56 of the Act. In the circumstances, there is no substance in the said submission. Even the other contention raised before me that case registered as NC No. 5/2004 being non-cognisable offence cannot be basis for action under section 56 of the Act is devoid of merits. The said offence though

non-cognisable falls within the offences provided for in Chapter XVI and Chapter XVII, namely, section 323 and 427 of the Indian Penal Code. If it is so, section 56 is clearly attracted as the same refers to offences punishable under Chapter XII, XVI or XVII of the I.P.C. Accordingly, there is no substance even in this submission. Viewed in this perspective, it cannot be said that the action against the Petitioner can be justified only on the basis of offences at item Nos. 3 and 4 being CR.No. 362/2002 and CR.No. 12/2004 respectively, but all the five offences referred to in the show cause notice are made the basis for reaching at the final conclusion by the authority below. If it is so, no case for interference is made out on the arguments canvassed before me, as referred to above.

. It was next contended that the show cause notice makes reference to proposed action under section 56(1)(a) and (b) of the Act. Whereas, the order as passed by the competent authority is only with reference to grounds under section 56(1)(b) of the Act. This submission is on the basis of the opening sentence of the order, which makes reference only to section 56(1)(b) of the

Act. However, what has been glossed over is that upon reading the order as a whole, the grounds for taking action against the Petitioner are not confined to grounds stated in section 56(1)(b), but also with reference to section 56(1)(a) of the Act. Moreover, the title of the order clearly refers to both these provisions. In my opinion, therefore, the action against the Petitioner is with reference to grounds under section 56(1)(a) and section 56(1)(b) of the Act.

. It was then contended that the action against the Petitioner is based on reason, which is not even remotely spelt out in the show cause notice. This submission is made relying on the observation in the impugned order passed by the competent authority i.e., "Rahivasi Dukandar (----------). It is contended that the action is resorted to because the "Rahivasi Dukandar (----------) within the vicinity apprehended danger of the harm to their person or property. Indeed, the order refers to expression "Rahivasi Dukandar (----------), which means resident shopkeepers and that expression is not referred to in the show cause notice, but the show cause notice clearly makes out a ground that

the residents within the vicinity were apprehending danger or harm to their person or property. Besides, the materials on record would support the apprehension so expressed. In the circumstances, I find no substance even in this submission.

. It is lastly contended that the appellate authority has referred to several grounds, inter alia, item Nos. 2, 3 and 4 mentioned in para 5 at page 36, which is not the ground pressed in the show cause notice nor the basis on which order has been passed by the competent authority. This submission clearly overlooks that the same was the argument canvassed before the appellate authority as recorded. However, that is not the basis on which the appellate authority has sustained the order passed by the competent authority. Viewed in this perspective, the reference to the said argument canvassed before the appellate authority will make no difference to the validity of the order as passed by the competent authority.

. Accordingly, this petition should fail and the same is dismissed.

(A.M.KHANWILKAR,J.)